IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1176 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KRISHNACHANDRA SOMNATH SHASTRI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 1176 of 2003

MR AD SHAH for Petitioner No. 1

MR AD OZA, PP with MR. PR ABICHANDANI, APP for Respondent

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 24/12/2003

ORAL JUDGEMENT

Rule. Mr. A.D. Oza, Ld. PP with Mr. P.R.

Abichandani, Ld. APP waives service of rule for the respondent.

At the instance of the learned counsels for the parties, the matter is taken up for final hearing today itself.

3. This petition has been filed by the petitioner entertaining certain apprehensions that in connection with the alleged scam in respect of a well known educational institute in the City, he may be arrested at any odd hours and deliberately put to not only physical hardship, but mental agony and above all he will lose his reputation. The say of the petitioner is that this apprehension is well founded because in the past it has happened once and now he apprehends that it may be repeated again. It is submitted by Mr. A.D. Shah, learned counsel appearing for the petitioner that considering the past history of this case, there is all the possibility that the petitioner will be taken by surprise by the investigating agency and he may be detained in the custody by effecting arrest at odd hours. He, therefore, submits that to avoid such thing happens it is required that the investigating agency be given direction in accordance with the decisions of the Apex Court rendered in the case of Central Bureau of Investigation v. Chandraswami alias Nemichand Jain reported in 1997 S.C.C. (Cri.) p. 432, in the case of Joginder Kumar v/s. State of U.P. reported in AIR 1994 S.C. p. 1349 and in the case of D.K. Basu v/s. State of West Bengal reported in AIR 1997 S.C. p. 610.

3.1. This petition is vehemently opposed by Mr. Oza appearing with Mr. Abichandani for the respondent on the ground that the powers of the investigating agency may not be curtained in any manner and also that if such order is passed, it may set a bad precedent.

4. So far the apprehension expressed by the Ld. PP that this order will serve as a precedent in other cases, it is clarified that this order is passed considering the peculiar facts of this case and also in accordance with the decisions of the Apex Court referred to above. When the decisions of the Apex Court are already there on this line, there is no question of any unhealthy precedent being set by this Court.

5. Having gone through the contents of the petition and after hearing the learned counsels for both the sides, it appears that on account of the events that have taken place in the past, the apprehension of this petitioner is genuine and well founded. It is also clear

that the petitioner is not a hard-core criminal and he is known educationalist. There is, therefore, every possibility that he will render full cooperation to the investigating agency and will not hamper the course of investigation. In that view of the matter, it is necessary to give the following directions :-

I. That the Investigating Officer may not immediately arrest the petitioner,

II. That the Investigating Officer at the reasonable hours i.e. during the course of the day, call the petitioner for interrogation and the petitioner shall extend full cooperation to the investigating agency during such interrogation and also other matters of the investigation.

III. If after registration of offence the Investigating Officer comes to the conclusion that there is reasonable justification for effecting the arrest, he may do so after giving him notice of 48 hours before effecting the arrest.

6. In view of the aforesaid directions, this petition is partly allowed. Rule made absolute to the aforesaid extent.

Copy of the writ be sent to Navrangpura Police Station, Ahmedabad. D.S. permitted.

[AKSHAY H. MEHTA, J.]

* Pansala.